

REMARKS

This responds to the Office Action dated June 9, 2006.

Claims 29, 49 and 54 are amended, no claims are canceled, and no claims are added.

Thus, claims 1-60 remain pending in this application.

§102 Rejection of the Claims

Claims 29-43, 45-56 and 58-60 were rejected under 35 U.S.C. § 102(e) as being anticipated by Chinchoy (U.S. 2004/0172077).

Applicant amended claim 29 to further clarify the recited subject matter. Support for the amendment is provided at least at page 24, line 1 to page 27, line 31 of the specification. With respect to amended claim 29, Applicant is unable to find in the cited portions of Chinchoy, among other things, an implantable cardiac rhythm management (CRM) device including a communication circuit adapted to transmit the recorded data to an external device for presentation of data trends useful to assess an efficacy of the prescribed CRT, wherein the presentation of data trends includes presentation of recorded data and time associated with the recorded data, as recited in the claim.

Chinchoy teaches displaying and plotting left ventricular pressure as a function of right ventricular pressure (FIGS 3A-4B). Applicant submits that time associated with the data (ventricular pressure) is not presented in these or any displays or plots disclosed or taught by Chinchoy. Therefore, a clinician would be unable to determine from these plots if the ventricular synchronization is getting worse or better over time, i.e. the data trends.

In addition, Applicant is unable to find in the cited portions of Chinchoy, among other things, an implantable cardiac rhythm management (CRM) device including a controller adapted to communicate with the plurality of interface channels and with the memory, the controller adapted to control the prescribed CRT to improve coordination of ventricular contraction, the prescribed CRT including pacing a left ventricle cardiac site at a predetermined time interval with respect to a cardiac event at a second cardiac site, as recited in claim 29. Chinchoy does not record or provide the user with a representation of the relative time between left ventricle pacing and other pacing events. Further, Applicant notes that Chinchoy uses LVP and RVP to refer to

ventricular pressure (paragraph 14 of Chinchoy), which is not the same as Applicant's left ventricular pacing and right ventricular pacing and the timing with respect to these pacing events.

Claims 30-43 and 45-48 depend, either directly or indirectly, on claim 29 and are believed to be in condition for allowance with claim 29.

Additional reasons for allowance are found in the dependent claims. For example with respect to claim 34, Applicant is unable to find the controller adapted to record a pacing mode and time information in the memory, as recited in the claim. With respect to claim 35, Applicant is unable to find the controller adapted to record when the device is operating in an atrial tracking mode to the memory, as recited in the claim. With respect to claim 36, Applicant is unable to find the controller is adapted to trend samples of data indicative of whether the left ventricle cardiac site was paced at the predetermined time interval with respect to the cardiac event at the second cardiac site, including to trend N samples per unit time, as recited in the claim. With respect to claim 37, Applicant is unable to find the controller adapted to trend samples of data indicative of whether the left ventricle cardiac site was paced at the predetermined time interval with respect to the cardiac event at the second cardiac site, including to trend N samples per unit time, as recited in the claim. With respect to claim 38, Applicant is unable to find the controller adapted to trend samples of data indicative of whether the left ventricle cardiac site was paced at the predetermined time interval with respect to the cardiac event at the second cardiac site, including to trend N samples per unit time until a predetermined change occurs in delivered CRT, and then trend M samples per unit time, as recited in the claim. With respect to claim 39, Applicant is unable to find the controller adapted to trend samples of data indicative of whether the left ventricle cardiac site was paced at the predetermined time interval with respect to the cardiac event at the second cardiac site, including to trend N samples per unit time until a predetermined threshold is reached related to delivered CRT, and then trend M samples per unit time, and then trend M samples per unit time, as recited in the claim. With respect to claim 40, Applicant is unable to find the controller adapted to trend samples of data indicative of whether the left ventricle cardiac site was paced at the predetermined time interval with respect to the cardiac event at the second cardiac site, including to trend N samples per unit time until a predetermined event occurs, and then trend M samples per unit time, as recited in the claim. With respect to claim 41, Applicant is unable to find the controller adapted to trend samples of data indicative of whether the left ventricle cardiac site was paced at the predetermined time interval with respect to the cardiac event at the second cardiac site, including to trend N samples per unit time after

initiation of a trigger selected from a group consisting of: a predetermined change in delivered CRT, a predetermined threshold related to delivered CRT, and a predetermined event, as recited in the claim. With respect to claim 41, Applicant is unable to find the controller adapted to trend samples of data indicative of whether the left ventricle cardiac site was paced at the predetermined time interval with respect to the cardiac event at the second cardiac site, including to trend a first parameter before a trigger selected from a group consisting of a predetermined change in delivered CRT, a predetermined threshold related to delivered CRT, and a predetermined event, and to trend a second parameter after the trigger, as recited in the claim.

Applicant amended claim 49 to further clarify the recited subject matter. Support for the amendment is provided at least at page 24, line 1 to page 27, line 31 of the specification. With respect to amended claim 49, Applicant is unable to find in the cited portions of Chinchoy, among other things, a system with a CRM device and a programmer, the programmer including a monitor adapted to communicate with a controller, wherein at least one of the programmer and the CRM device is adapted to trend the data, the monitor being adapted to display information corresponding to the trended data indicative of whether the left ventricle cardiac site was paced at the predetermined time interval with respect to the cardiac event at the second cardiac site, wherein displaying information corresponding to the trended data includes presentation of recorded data and time associated with the recorded data, as recited in the claim. Claims 50-53 depend directly on claim 49 and are believed to be in condition for allowance with claim 49.

Applicant amended claim 54 to further clarify the recited subject matter. Support for the amendment is provided at least at page 24, line 1 to page 27, line 31 of the specification. With respect to amended claim 54, Applicant is unable to find in the cited portions of Chinchoy, among other things, a system with a CRM device and a programmer, the programmer including means for displaying information corresponding to the trended data indicative of whether the left ventricle cardiac site was paced at the predetermined time interval with respect to the cardiac event at the second cardiac site, wherein displaying information corresponding to the trended data includes presentation of recorded data and time associated with the recorded data, as recited in the claim. Claims 55-56 and 58-60 depend directly on claim 54 and are believed to be in condition for allowance with claim 54.

Reconsideration and allowance of claims 29-43, 45-56 and 58-60 are respectfully requested.

§103 Rejection of the Claims

Claim 44

Claim 44 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Chinchoy (U.S. 2004/0172077) as applied to claim 41 above, and in view of Schroepel et al. (U.S. Patent No. 5,749,900, “Schroepel”). Applicant respectfully traverses the rejection for at least the following reasons.

As stated above with respect to independent claim 29, Applicant respectfully asserts that Chinchoy does not anticipate the subject matter recited in claim 29, as recited. Applicant respectfully submits that the deficiencies in the rejection with respect to Chinchoy discussed above are not overcome by combination with the cited portions of Schroepel. Additionally, Applicant can find no suggestion to combine the references. Applicant is unable to find a suggestion in either Chinchoy or Schroepel to combine the evaluation of ventricular synchronization of Chinchoy with the cardiac event forecasting of Schroepel. Claim 44 depends indirectly on claim 29, and is believed to be allowable at least for the reasons provided with respect to claim 29.

Reconsideration and allowance of claim 44 are respectfully requested.

Claim 57

Claim 57 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Chinchoy (U.S. 2004/0172077). Applicant respectfully traverses the rejection for at least the following reasons.

As stated above with respect to independent claim 54, Applicant respectfully asserts that Chinchoy does not anticipate the subject matter recited in claim 54, as recited. Claim 57 depends directly on claim 54, and is believed to be allowable for the reasons provided with respect to claim 54. Additionally, Applicant traverses the assertion that it is obvious to include a table of trended data.

Since all the elements of the claims are not found in the reference, Applicant assumes that the Examiner is taking Official Notice of the missing elements. Applicant respectfully objects to the taking of Official Notice with a single reference obviousness rejection and, pursuant to M.P.E.P. § 2144.03, Applicant respectfully traverses the assertion of Official Notice and requests that the Examiner cite references in support of this position.

Reconsideration of the rejection and allowance of claim 57 are respectfully requested.

Reservation of the Right to Swear Behind References

Applicant maintains its right to swear behind any references which are cited in a rejection under 35 U.S.C. §§ 102(a), 102(e), 103/102(a), and 103/102(e). Statements distinguishing the claimed subject matter over the cited references are not to be interpreted as admissions that the references are prior art.

AMENDMENT AND RESPONSE UNDER 37 CFR § 1.111

Serial Number: 10/730,760

Filing Date: December 8, 2003

Title: TRENDED MEASUREMENT OF CARDIAC RESYNCHRONIZATION THERAPY

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Dkt: 279.663US1

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (715) 824-5144 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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Date September 11, 2006

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this September 11 day of September 2006.

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